

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19867
Docket Number TE-14754

Thomas L. Hayes, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((formerly The Order of Railroad Telegraphers)

PARTIES TO DISPUTE: (

(Southern Pacific Company, Pacific Lines

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific (Pacific Lines), that:

1. Carrier violated the Agreement between the parties when on September 28, October 4, 5, 6, 7 and 10, 1962, and continuing each date thereafter, when work belonging to employees covered by the Telegraphers' Agreement was removed from the Scope Rule and the Carrier required or permitted employees of another class or craft, not covered by the Agreement, at Delano, California, to handle communications of record in the form of bad order car reports.

2. (a) Claim in behalf of J. Parrish, regularly assigned Telegrapher, Delano, California, or his successor, whose assigned hours are from 7:00 A.M. to 4:00 P.M., daily, except Sunday and Monday, rest days, for a special two (2) hour call at the overtime rate for each date September 28, October 4, 5, 6, 7 and 10, 1962.

(b) Claim in behalf of W. G. Tranmer, a regularly assigned 2nd Wire Chief-Telegrapher-Clerk, Fresno Yard, Fresno, California, or his successor, whose assigned hours are from 3:00 P.M. to 11:00 P.M. daily, except Monday and Tuesday, for a special two (2) hour call at the overtime rate for each date September 28, October 4, 5, 6, 7, 1962.

(c) Claim in behalf of Gus Adams, regularly assigned Relief Wire Chief-Telegrapher-Clerk, Fresno Yard, Fresno, California, or his successor, whose assigned hours on October 10, 1962 were from 3:00 P.M. to 11:00 P.M., for a special two (2) hour call at the overtime rate for October 10, 1962.

OPINION OF BOARD: Shortly after midnight on each date, September 28, October 4, 5, 6, 7 and 10, 1962, a single clerk employed at Delano, California could not apply seals to certain refrigerator cars loaded with grapes for outbound perishable movement because some of the car doors could not be closed and locked. To obviate delay and to make sure that such cars would be properly sealed, the clerk at Delano telephoned a clerk at Fresno Yard Office and advised him of car numbers of those cars having doors which needed sealing.

Claimants contend that messages of the nature outlined above should be handled by employees under the Telegraphers' Agreement and that Carrier erred in allowing others not holding seniority under this Agreement to perform the work.

It is clear to the Board that the messages in question were directly concerned with the protection of perishable commodities and the necessity to have car repairmen at Fresno alerted to make necessary repairs to refrigerator cars.

Award No. 12 of Special Board of Adjustment No. 533, these parties, states that work belongs to these Telegraphers if it falls within one of the following categories:

"(1) relates to the control or movement of trains or safety of passengers or products, (2) is a communication of record as that term has been used in the decisions or (3) by tradition, custom and practice on the property has been performed by telegraphers to the exclusion of other employees."

In this case we are dealing with telephone conversations about refrigerator car doors that needed sealing and repairs were actually made on these cars after their arrival in Fresno Yard. The messages in question had a direct bearing on the safety of the perishable commodities being handled in the cars and the message work belonged to the Telegraphers under the criterion of Award No. 12 cited above which reads:

"(1) relates to the control or movement of trains or safety of passengers or products".

In view of the foregoing, we find that the disputed communication work should have been handled by employees under the Telegraphers' Agreement and the claims are therefore sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Parks
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July 1973.

CARRIER MEMBERS' DISSENT TO AWARD 19867, DOCKET TE-14754

(Referee Hayes)

For the reasons fully stated in the memorandum which the Carrier Members submitted to the Referee during the panel discussion of this case, the claim is clearly invalid and should have been denied.

We dissent.

H. J. Naylor

W. M. Fairwood

P. C. Carter

W. B. Jones


G. W. Graham

LABOR MEMBER'S ANSWER
TO
CARRIER MEMBERS' DISSENT TO AWARD 19867 (DOCKET TE-14754)

Disputes submitted to this Board are adjudicated upon consideration of the facts and evidence in the official record as detailed and explained by the parties to the dispute, not upon Carrier Member Memoranda..

Carrier Member Memoranda, regardless of length or sophistry, are not a substitute for, nor do they change, either the record or the facts.

The Dissent has no bearing on the validity of the Award.


J. P. Flewener,
Labor Member
628-73